



1                                   A bill to be entitled  
2           An act relating to motor vehicle manufacturer  
3           licenses; amending s. 320.64, F.S.; revising  
4           provisions for denial, suspension, or revocation of  
5           the license of a manufacturer, factory branch,  
6           distributor, or importer of motor vehicles; revising  
7           provisions for certain audits of service-related  
8           payments or incentive payments to a dealer by an  
9           applicant or licensee and the timeframe for the  
10          performance of such audits; defining the term  
11          "incentive"; revising provisions for denial or  
12          chargeback of claims; revising provisions that  
13          prohibit certain adverse actions against a dealer that  
14          sold or leased a motor vehicle to a customer who  
15          exported the vehicle to a foreign country or who  
16          resold the vehicle; revising conditions for taking  
17          such adverse actions; prohibiting failure to make  
18          certain payments to a motor vehicle dealer for  
19          temporary replacement vehicles under certain  
20          circumstances; prohibiting requiring or coercing a  
21          dealer to purchase goods or services from a vendor  
22          designated by the applicant or licensee unless certain  
23          conditions are met; providing procedures for approval  
24          of a dealer to purchase goods or services from a  
25          vendor not designated by the applicant or licensee;  
26          defining the term "goods or services"; creating s.



27 | 320.646, F.S.; defining the terms "consumer data" and  
28 | "data management system"; requiring that a licensee or  
29 | a third party comply with certain restrictions on  
30 | reuse or disclosure of consumer data received from a  
31 | motor vehicle dealer; requiring that such person  
32 | provide a written statement to the motor vehicle  
33 | dealer delineating the established procedures adopted  
34 | by the person which meet or exceed certain  
35 | requirements to safeguard consumer data; requiring  
36 | that upon request of a motor vehicle dealer a licensee  
37 | provide a list of the consumer data obtained and all  
38 | persons to whom any of the data has been disclosed,  
39 | subject to certain requirements; prohibiting a  
40 | licensee from requiring a motor vehicle dealer to  
41 | grant the licensee or third party access to the  
42 | dealer's data management system; requiring a licensee  
43 | to permit a motor vehicle dealer to furnish consumer  
44 | data in a widely accepted file format and through a  
45 | third-party vendor selected by the motor vehicle  
46 | dealer; authorizing a licensee to access or obtain  
47 | consumer data from a motor vehicle dealer's data  
48 | management system with the dealer's express written  
49 | consent, subject to certain requirements; requiring  
50 | the licensee to indemnify the motor vehicle dealer for  
51 | certain claims or damages; providing that a person  
52 | bringing a specified cause of action for certain



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53 | violations must meet certain requirements; reenacting  
54 | s. 320.6992, F.S., relating to the provisions that  
55 | apply to established systems of distribution of motor  
56 | vehicles in this state, to incorporate s. 320.646,  
57 | F.S., as created by the act, in a reference thereto;  
58 | providing an effective date.

59

60 | Be It Enacted by the Legislature of the State of Florida:

61

62 | Section 1. Subsections (25) and (26) of section 320.64,  
63 | Florida Statutes, are amended, and subsections (39) and (40) are  
64 | added to that section, to read:

65 | 320.64 Denial, suspension, or revocation of license;  
66 | grounds.—A license of a licensee under s. 320.61 may be denied,  
67 | suspended, or revoked within the entire state or at any specific  
68 | location or locations within the state at which the applicant or  
69 | licensee engages or proposes to engage in business, upon proof  
70 | that the section was violated with sufficient frequency to  
71 | establish a pattern of wrongdoing, and a licensee or applicant  
72 | shall be liable for claims and remedies provided in ss. 320.695  
73 | and 320.697 for any violation of any of the following  
74 | provisions. A licensee is prohibited from committing the  
75 | following acts:

76 | (25) The applicant or licensee has undertaken or engaged  
77 | in an audit of warranty, maintenance, and other service-related  
78 | payments or incentive payments, including payments to a motor



79 | vehicle dealer under any licensee-issued program, policy, or  
80 | other benefit, which were previously ~~have been~~ paid to a motor  
81 | vehicle dealer in violation of this section or has failed to  
82 | comply with any of its obligations under s. 320.696. An  
83 | applicant or licensee may reasonably and periodically audit a  
84 | motor vehicle dealer to determine the validity of paid claims as  
85 | provided in s. 320.696. Audits of warranty, maintenance, and  
86 | other service-related payments shall be performed by an  
87 | applicant or licensee only during the 12-month ~~1-year~~ period  
88 | immediately following the date the claim was paid. Audits ~~Audit~~  
89 | of incentive payments shall ~~only~~ be performed only during the  
90 | 12-month ~~for an 18-month~~ period immediately following the date  
91 | the incentive was paid. As used in this section, the term  
92 | "incentive" includes any bonus, incentive, or other monetary or  
93 | nonmonetary consideration. After such time periods have elapsed,  
94 | all warranty, maintenance, and other service-related payments  
95 | and incentive payments shall be deemed final and  
96 | incontrovertible for any reason notwithstanding any otherwise  
97 | applicable law, and the motor vehicle dealer shall not be  
98 | subject to any chargeback ~~charge-back~~ or repayment. An applicant  
99 | or licensee may deny a claim or, as a result of a timely  
100 | conducted audit, impose a chargeback ~~charge-back~~ against a motor  
101 | vehicle dealer for warranty, maintenance, or other service-  
102 | related payments or incentive payments only if the applicant or  
103 | licensee can show that the warranty, maintenance, or other  
104 | service-related claim or incentive claim was false or fraudulent



105 or that the motor vehicle dealer failed to substantially comply  
106 with the reasonable written and uniformly applied procedures of  
107 the applicant or licensee for such repairs or incentives, but  
108 only for that portion of the claim so shown. Notwithstanding the  
109 terms of any franchise agreement, guideline, program, policy, or  
110 procedure, an applicant or licensee may deny or charge back only  
111 that portion of a warranty, maintenance, or other service-  
112 related claim or incentive claim which the applicant or licensee  
113 has proven to be false or fraudulent or for which the dealer  
114 failed to substantially comply with the reasonable written and  
115 uniformly applied procedures of the applicant or licensee for  
116 such repairs or incentives, as set forth in this subsection. An  
117 applicant or licensee may not charge back a motor vehicle dealer  
118 ~~back~~ subsequent to the payment of a warranty, maintenance, or  
119 service-related claim or incentive claim unless, within 30 days  
120 after a timely conducted audit, a representative of the  
121 applicant or licensee first meets in person, by telephone, or by  
122 video teleconference with an officer or employee of the dealer  
123 designated by the motor vehicle dealer. At such meeting the  
124 applicant or licensee must provide a detailed explanation, with  
125 supporting documentation, as to the basis for each of the claims  
126 for which the applicant or licensee proposed a chargeback  
127 ~~charge-back~~ to the dealer and a written statement containing the  
128 basis upon which the motor vehicle dealer was selected for audit  
129 or review. Thereafter, the applicant or licensee must provide  
130 the motor vehicle dealer's representative a reasonable period



131 after the meeting within which to respond to the proposed  
132 chargebacks ~~charge-backs~~, with such period to be commensurate  
133 with the volume of claims under consideration, but in no case  
134 less than 45 days after the meeting. The applicant or licensee  
135 is prohibited from changing or altering the basis for each of  
136 the proposed chargebacks ~~charge-backs~~ as presented to the motor  
137 vehicle dealer's representative following the conclusion of the  
138 audit unless the applicant or licensee receives new information  
139 affecting the basis for one or more chargebacks ~~charge-backs~~ and  
140 that new information is received within 30 days after the  
141 conclusion of the timely conducted audit. If the applicant or  
142 licensee claims the existence of new information, the dealer  
143 must be given the same right to a meeting and right to respond  
144 as when the chargeback ~~charge-back~~ was originally presented.  
145 After all internal dispute resolution processes provided through  
146 the applicant or licensee have been completed, the applicant or  
147 licensee shall give written notice to the motor vehicle dealer  
148 of the final amount of its proposed chargeback ~~charge-back~~. If  
149 the dealer disputes that amount, the dealer may file a protest  
150 with the department within 30 days after receipt of the notice.  
151 If a protest is timely filed, the department shall notify the  
152 applicant or licensee of the filing of the protest, and the  
153 applicant or licensee may not take any action to recover the  
154 amount of the proposed chargeback ~~charge-back~~ until the  
155 department renders a final determination, which is not subject  
156 to further appeal, that the chargeback ~~charge-back~~ is in



157 compliance with the provisions of this section. In any hearing  
158 pursuant to this subsection, the applicant or licensee has the  
159 burden of proof that its audit and resulting chargeback ~~charge-~~  
160 ~~back~~ are in compliance with this subsection.

161 (26) Notwithstanding the terms of any franchise agreement,  
162 including any licensee's program, policy, or procedure, the  
163 applicant or licensee has refused to allocate, sell, or deliver  
164 motor vehicles; charged back or withheld payments or other  
165 things of value for which the dealer is otherwise eligible under  
166 a sales promotion, program, or contest; prevented a motor  
167 vehicle dealer from participating in any promotion, program, or  
168 contest; or has taken or threatened to take any adverse action  
169 against a dealer, including chargebacks ~~charge-backs~~, reducing  
170 vehicle allocations, or terminating or threatening to terminate  
171 a franchise because the dealer sold or leased a motor vehicle to  
172 a customer who exported the vehicle to a foreign country or who  
173 resold the vehicle, unless the licensee proves that the dealer  
174 knew or reasonably should have known that the customer intended  
175 to export or resell the motor vehicle. There is a rebuttable  
176 presumption that the dealer neither knew nor reasonably should  
177 have known of its customer's intent to export or resell the  
178 vehicle if the vehicle is titled or registered in any state in  
179 this country. A licensee may not take any action against a motor  
180 vehicle dealer, including reducing its allocations or supply of  
181 motor vehicles to the dealer, or charging back to a dealer any  
182 ~~for an~~ incentive payment previously paid, unless the licensee



183 first meets in person, by telephone, or video conference with an  
184 officer or other designated employee of the dealer. At such  
185 meeting, the licensee must provide a detailed explanation, with  
186 supporting documentation, as to the basis for its claim that the  
187 dealer knew or reasonably should have known of the customer's  
188 intent to export or resell the motor vehicle. Thereafter, the  
189 motor vehicle dealer shall have a reasonable period,  
190 commensurate with the number of motor vehicles at issue, but not  
191 less than 15 days, to respond to the licensee's claims. If,  
192 following the dealer's response and completion of all internal  
193 dispute resolution processes provided through the applicant or  
194 licensee, the dispute remains unresolved, the dealer may file a  
195 protest with the department within 30 days after receipt of a  
196 written notice from the licensee that it still intends to take  
197 adverse action against the dealer with respect to the motor  
198 vehicles still at issue. If a protest is timely filed, the  
199 department shall notify the applicant or licensee of the filing  
200 of the protest, and the applicant or licensee may not take any  
201 action adverse to the dealer until the department renders a  
202 final determination, which is not subject to further appeal,  
203 that the licensee's proposed action is in compliance with the  
204 provisions of this subsection. In any hearing pursuant to this  
205 subsection, the applicant or licensee has the burden of proof on  
206 all issues raised by this subsection. An applicant or licensee  
207 may not take any adverse action against a motor vehicle dealer  
208 because the dealer sold or leased a motor vehicle to a customer





209 who exported the vehicle to a foreign country or who resold the  
210 vehicle unless the applicant or licensee provides written  
211 notification to the motor vehicle dealer of such resale or  
212 export within 12 months after the date the dealer sold or leased  
213 the vehicle to the customer.

214 (39) Notwithstanding any agreement, program, incentive,  
215 bonus, policy, or rule, an applicant or licensee may not fail to  
216 make any payment pursuant to any agreement, program, incentive,  
217 bonus, policy, or rule for any temporary replacement motor  
218 vehicle loaned, rented, or provided by a motor vehicle dealer to  
219 or for its service or repair customers, even if the temporary  
220 replacement motor vehicle has been leased, rented, titled, or  
221 registered to the motor vehicle dealer's rental or leasing  
222 division or an entity that is owned or controlled by the motor  
223 vehicle dealer, provided that the motor vehicle dealer or its  
224 rental or leasing division or entity complies with the written  
225 and uniformly enforced vehicle eligibility, use, and reporting  
226 requirements specified by the applicant or licensee in its  
227 agreement, program, policy, bonus, incentive, or rule relating  
228 to loaner vehicles.

229 (40) Notwithstanding the terms of any franchise agreement,  
230 the applicant or licensee may not require or coerce, or attempt  
231 to require or coerce, a motor vehicle dealer to purchase goods  
232 or services from a vendor selected, identified, or designated by  
233 the applicant or licensee, or one of its parents, subsidiaries,  
234 divisions, or affiliates, by agreement, standard, policy,



235 program, incentive provision, or otherwise, without making  
236 available to the motor vehicle dealer the option to obtain the  
237 goods or services of substantially similar design and quality  
238 from a vendor chosen by the motor vehicle dealer. If the motor  
239 vehicle dealer exercises such option, the dealer must provide  
240 written notice of its desire to use the alternative goods or  
241 services to the applicant or licensee, along with samples or  
242 clear descriptions of the alternative goods or services that the  
243 dealer desires to use. The licensee or applicant shall have the  
244 opportunity to evaluate the alternative goods or services for up  
245 to 30 days to determine whether it will provide a written  
246 approval to the motor vehicle dealer to use said alternative  
247 goods or services. Approval may not be unreasonably withheld by  
248 the applicant or licensee. If the motor vehicle dealer does not  
249 receive a response from the applicant or licensee within 30  
250 days, approval to use the alternative goods or services is  
251 deemed granted. If a dealer using alternative goods or services  
252 complies with this subsection and has received approval from the  
253 licensee or applicant, the dealer is not ineligible for all  
254 benefits described in the agreement, standard, policy, program,  
255 incentive provision, or otherwise solely for having used such  
256 alternative goods or services. As used in this subsection, the  
257 term "goods or services" is limited to such goods and services  
258 used to construct or renovate dealership facilities or furniture  
259 and fixtures at the dealership facilities. The term does not  
260 include:



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261 (a) Any materials subject to the applicant's or licensee's  
262 intellectual property rights, including copyright, trademark, or  
263 trade dress rights;

264 (b) Any special tool and training as required by the  
265 applicant or licensee;

266 (c) Any part to be used in repairs under warranty  
267 obligations of an applicant or licensee;

268 (d) Any good or service paid for entirely by the applicant  
269 or licensee; or

270 (e) Any applicant's or licensee's design or architectural  
271 review service.

272

273 A motor vehicle dealer who can demonstrate that a violation of,  
274 or failure to comply with, any of the preceding provisions by an  
275 applicant or licensee will or can adversely and pecuniarily  
276 affect the complaining dealer, shall be entitled to pursue all  
277 of the remedies, procedures, and rights of recovery available  
278 under ss. 320.695 and 320.697.

279 Section 2. Section 320.646, Florida Statutes, is created  
280 to read:

281 320.646 Consumer data protection.—

282 (1) As used in this section, the term:

283 (a) "Consumer data" means "nonpublic personal information"  
284 as such term is defined in 15 U.S.C. s. 6809(4) collected by a  
285 motor vehicle dealer and which is provided by the motor vehicle  
286 dealer directly to a licensee or third party acting on behalf of



287 a licensee. Consumer data does not include the same or similar  
288 data which is obtained by a licensee from any other source.

289 (b) "Data management system" means a computer hardware or  
290 software system that is owned, leased, or licensed by a motor  
291 vehicle dealer, including a system of web-based applications,  
292 computer software, or computer hardware, whether located at the  
293 motor vehicle dealership or hosted remotely, and that stores and  
294 provides access to consumer data collected or stored by a motor  
295 vehicle dealer. The term includes, but is not limited to,  
296 dealership management systems and customer relations management  
297 systems.

298 (2) Notwithstanding the provisions of any franchise  
299 agreement, with respect to consumer data a licensee or a third  
300 party acting on behalf of a licensee:

301 (a) Shall comply with all, and not knowingly cause a motor  
302 vehicle dealer to violate any, applicable restrictions on reuse  
303 or disclosure of the consumer data established by federal or  
304 state law and must provide a written statement to the motor  
305 vehicle dealer upon request describing the established  
306 procedures adopted by the licensee or third party acting on  
307 behalf of the licensee which meet or exceed any federal or state  
308 requirements to safeguard the consumer data, including, but not  
309 limited to, those established in the Gramm-Leach-Bliley Act, 15  
310 U.S.C. ss. 6801 et seq.

311 (b) Shall, upon the written request of the motor vehicle  
312 dealer, provide a written list of the consumer data obtained



313 from the motor vehicle dealer and all persons to whom any  
314 consumer data has been provided by the licensee or a third party  
315 acting on behalf of a licensee during the preceding 6 months.  
316 The dealer may make such a request no more than once every 6  
317 months. The list must indicate the specific fields of consumer  
318 data which were provided to each person. Notwithstanding the  
319 foregoing, such a list need not include:

320 1. A person to whom consumer data was provided, or the  
321 specific consumer data provided to such person, if the person  
322 was, at the time the consumer data was provided, one of the  
323 licensee's service providers, subcontractors or consultants  
324 acting in the course of such person's performance of services on  
325 behalf of or for the benefit of the licensee or motor vehicle  
326 dealer, provided that the licensee has entered into an agreement  
327 with such person requiring that the person comply with the  
328 safeguard requirements of applicable state and federal law,  
329 including, but not limited to, those established in the Gramm-  
330 Leach-Bliley Act, 15 U.S.C. ss. 6801 et seq.; or

331 2. A person to whom consumer data was provided, or the  
332 specific consumer data provided to such person, if the motor  
333 vehicle dealer has previously consented in writing to such  
334 person receiving the consumer data provided and the motor  
335 vehicle dealer has not withdrawn such consent in writing.

336 (c) May not require that a motor vehicle dealer grant the  
337 licensee or a third party direct or indirect access to the  
338 dealer's data management system to obtain consumer data. A



339 licensee must permit a motor vehicle dealer to furnish consumer  
340 data in a widely accepted file format, such as comma delimited,  
341 and through a third-party vendor selected by the motor vehicle  
342 dealer. However, a licensee may access or obtain consumer data  
343 directly from a motor vehicle dealer's data management system  
344 with the express consent of the dealer. The consent must be in  
345 the form of a written document that is separate from the  
346 parties' franchise agreement, is executed by the motor vehicle  
347 dealer, and may be withdrawn by the dealer upon 30 days' written  
348 notice to the licensee.

349 (d) Must indemnify the motor vehicle dealer for any third-  
350 party claims asserted against or damages incurred by the motor  
351 vehicle dealer to the extent caused by access to, use of, or  
352 disclosure of consumer data in violation of this section by the  
353 licensee, a third party acting on behalf of the licensee, or a  
354 third party to whom the licensee has provided consumer data.

355 (3) In any cause of action against a licensee pursuant to  
356 s. 320.697 for a violation of paragraph (2) (a), paragraph  
357 (2) (b), or paragraph (2) (c), the person bringing the action has  
358 the burden of proving that the violation was willful or with  
359 sufficient frequency to establish a pattern of wrongdoing with  
360 respect to such person's consumer data.

361 Section 3. For the purpose of incorporating section  
362 320.646, Florida Statutes, as created by this act, in a  
363 reference thereto, section 320.6992, Florida Statutes, is  
364 reenacted to read:



365           320.6992 Application.—Sections 320.60-320.70, including  
366 amendments to ss. 320.60-320.70, apply to all presently existing  
367 or hereafter established systems of distribution of motor  
368 vehicles in this state, except to the extent that such  
369 application would impair valid contractual agreements in  
370 violation of the State Constitution or Federal Constitution.  
371 Sections 320.60-320.70 do not apply to any judicial or  
372 administrative proceeding pending as of October 1, 1988. All  
373 agreements renewed, amended, or entered into subsequent to  
374 October 1, 1988, shall be governed by ss. 320.60-320.70,  
375 including any amendments to ss. 320.60-320.70 which have been or  
376 may be from time to time adopted, unless the amendment  
377 specifically provides otherwise, and except to the extent that  
378 such application would impair valid contractual agreements in  
379 violation of the State Constitution or Federal Constitution.

380           Section 4. This act shall take effect upon becoming a law.